

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of
Procedure 2017 ("the Rules")

in connection with

2/9 Carrick Knowe Avenue, Edinburgh, EH12 7BX ("the Property")

Case Reference: FTS/HPC/EV/19/3892

MISS NATASHA MCGOURT ("the Applicant")

MR SCOTT PYE ("the Respondent")

1. The application was made under Rule 110 of the Rules being an application for a wrongful termination order. The application was accompanied by copies of a notice to quit, a notice in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and text messages between the parties.
2. A request for further information was sent to the Applicant on 18 December 2019. The Applicant was asked, amongst other things, to provide a copy of the tenancy agreement between the parties.
3. The Applicant provided a copy of an agreement which specified an initial period of let commencing on 14 March 2014. The Applicant further advised that, irrespective of the notice in terms of Section 33 of the 1988 Act, she had an assured tenancy as no notice in terms of Section 32 of the 1988 Act had been provided to her prior to the commencement of the tenancy agreement.

Decision

4. The circumstances in which an application is to be rejected are governed by Rule 8 of the Chamber Procedural Rules. That Rule provides:-

"Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

- (a) they consider that the application is frivolous or vexatious;
- (b) the dispute to which the application relates has been resolved;
- (c) they have good reason to believe that it would not be appropriate to accept the application;
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

5. **After consideration of the application, the attachments and correspondence from the Applicant's solicitor, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

Reasons for Decision

6. Rule 110 permits an application for a wrongful termination order under Sections 57 and 58 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). Both provisions apply to a **private residential tenancy** which has been brought to an end by an eviction order and in accordance with Section 50 of the 2016 Act respectively.
7. A private residential tenancy is defined by Section 1 of the 2016 Act. Section 1 states as follows:-

1 Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where—

- (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,
- (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and
- (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

9. Paragraph 21 of Schedule 1 of the 2016 Act states as follows:-

Tenancies under previous legislation

21 A tenancy cannot be a private residential tenancy if it is—

(a)a protected tenancy within the meaning of the Rent (Scotland) Act 1984,

(b)a tenancy to which Part VI of that Act applies,

(c)a Part VII contract under that Act, or

(d)an assured tenancy (including a statutory assured tenancy) within the meaning of the Housing (Scotland) Act 1988.

It is clear that a tenancy which is an assured tenancy within the meaning of the 1988 Act is excluded from being a private residential tenancy within the meaning of the 2016 Act. In the present case, the Applicant asserts she had an assured tenancy at the Property. From the tenancy agreement provided, that would appear to be correct. The Tribunal believes that both assured and short assured tenancies fall within the definition of an assured tenancy within the meaning of the 1988 Act. Accordingly, the Applicant is not entitled to apply for a wrongful termination order, which may only be made by the Tribunal in respect of a private residential tenancy and the present application is incompetent.

10. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success. Accordingly, the present application is rejected on the basis that it is frivolous.

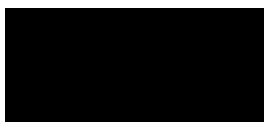
What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the

First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.



Mr Alastair Houston

Legal Member

7 January 2020